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# MONTANA LEGISLATIVE HISTORY

Chapter 322 19 93

Bill H 550 S _____ Original bill & history ____C

| H. Committee on Local Government | | S. Committee on Local Government | |
|---|---|---|---|
| Hearing Date(s) Feb 16 | ✓ C | Hearing Date(s) Mar 11 | ✓ C |
| _____ | ____C | Mar 25 | ✓ C |
| _____ | ____C | _____ | ____C |
| _____ | ____C | _____ | ____C |
| Date Out Feb 19 | ✓ C | Mar 26 | ✓ C |

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

| | | | |
|---|---|---|---|
| 2/10 | FIRST READING | | |
| 2/10 | FISCAL NOTE REQUESTED | | |
| 2/16 | FISCAL NOTE RECEIVED | | |
| 2/17 | FISCAL NOTE PRINTED | | |
| 3/05 | HEARING | | |
| 3/15 | REVISED FISCAL NOTE REQUESTED | | |
| 3/16 | REVISED FISCAL NOTE RECEIVED | | |
| 3/16 | REVISED FISCAL NOTE PRINTED | | |
| 3/18 | COMMITTEE REPORT—BILL PASSED AS AMENDED | | |
| 3/23 | 2ND READING PASSED | 95 | 1 |
| 3/24 | 3RD READING PASSED | 95 | 4 |
| | TRANSMITTED TO SENATE | | |
| 3/26 | FIRST READING | | |
| 3/26 | FIRST READING | | |
| 3/26 | REFERRED TO FINANCE & CLAIMS | | |
| 3/29 | HEARING | | |
| 3/30 | COMMITTEE REPORT—BILL CONCURRED | | |
| 3/31 | 2ND READING CONCURRED | 36 | 12 |
| 4/01 | 3RD READING CONCURRED | 35 | 13 |
| | RETURNED TO HOUSE | | |
| 4/07 | SIGNED BY SPEAKER | | |
| 4/13 | SIGNED BY PRESIDENT | | |
| 4/14 | TRANSMITTED TO GOVERNOR | | |
| 4/19 | SIGNED BY GOVERNOR | | |
| | CHAPTER NUMBER 411 | | |
| | EFFECTIVE DATE: 07/01/93 | | |

HB 550 INTRODUCED BY BERGMAN, ET AL.

WAIVE CONFLICT OF INTEREST FOR LOCAL GOVERNMENT OFFICERS AND EMPLOYEES

| | | | |
|---|---|---|---|
| 2/10 | INTRODUCED | | |
| 2/10 | REFERRED TO LOCAL GOVERNMENT | | |
| 2/10 | FIRST READING | | |
| 2/16 | HEARING | | |
| 2/17 | COMMITTEE REPORT—BILL PASSED | | |
| 2/19 | 2ND READING PASSED | 55 | 39 |
| 2/22 | 3RD READING PASSED | 67 | 31 |
| | TRANSMITTED TO SENATE | | |
| 3/01 | FIRST READING | | |
| 3/01 | REFERRED TO LOCAL GOVERNMENT | | |
| 3/11 | HEARING | | |
| 3/26 | COMMITTEE REPORT—BILL CONCURRED | | |
| 3/27 | 2ND READING CONCURRED | 45 | 0 |
| 3/29 | 3RD READING CONCURRED | 47 | 1 |
| | RETURNED TO HOUSE | | |
| 4/06 | SIGNED BY SPEAKER | | |
| 4/07 | SIGNED BY PRESIDENT | | |
| 4/08 | TRANSMITTED TO GOVERNOR | | |
| 4/12 | SIGNED BY GOVERNOR | | |
| | CHAPTER NUMBER 322 | | |
| | EFFECTIVE DATE: 10/01/93 | | |

HB 551 INTRODUCED BY COBB

REQUIRE PERSON CONVICTED OF DANGEROUS DRUG OFFENSE TO ATTEND DANGEROUS DRUG INFORMATION COURSE

| | | | |
|---|---|---|---|
| 2/10 | INTRODUCED | | |
| 2/10 | REFERRED TO JUDICIARY | | |
| 2/10 | FIRST READING | | |

allow for employees of park departments to be hired and fired in the same manner as other city employees. The current statute requires the park board itself to approve all claims. HB 510 would grant a city the right to allow claims to be approved or disapproved by the governing body such as the city council or commission.

**Jim Van Fossen, Director of Parks and Recreation, Missoula,** testified that the park board is unanimously in support of HB 510. The board does not feel that the mayor should be required to sit on the board. He stated they would be more comfortable handling claims the same way other cities' park boards do.

**Alec Hansen, Executive Director, Montana League of Cities and Towns,** said they support this legislation. The authority granted by this bill is discretionary.

**REP. TIM SAYLES, HB 61, Missoula,** testified in support of HB 510.

Opponents' Testimony: None

Questions From Committee Members and Responses:

**REP. MCCAFFREE** asked **Mayor Kemmis** what the rationale is of the mayor rather than the council appointing the personnel. **Mayor Kemmis** said appointments are made by the mayor subject to approval by the city council, but rarely does the council make the appointments. This is consistent with the way it has been done.

Closing by Sponsor:

**REP. HANSEN** thanked the committee and closed on HB 510.

## HEARING ON HOUSE BILL 550

Opening Statement by Sponsor:

**REP. ELLEN BERGMAN, HB 26, Miles City,** introduced HB 550, a bill to waive conflict of interest for local government officers and employees. **EXHIBIT 46**

Proponents' Testimony:

**Jim Richard, White Sulphur Springs,** testified in support of HB 550. **EXHIBIT 47** He stated that if the conflict of interest could be waived communities would benefit. The barrier to abuse would be the public disclosure. The public hearing or disclosure is a way for the public to hear about a waiver.

**Alec Hansen, Executive Director, Montana League of Cities and Towns,** testified in support of HB 550 and stated that people who work for cities or towns are being written out of a very

important federal assistance program for which they would qualify under normal circumstances.

**Gordon Morris, Executive Director, Montana Association of Counties, (MACo),** testified in support of HB 550. This legislation is appropriate especially in smaller communities where you have a number of skilled people who would qualify.

Opponents' Testimony: None

Questions From Committee Members and Responses:

**REP. EWER** noted that although the bill is supposedly addressing only smaller communities, nowhere in the bill is a small community defined. He asked **Mr. Morris** if he sees any downside of having this legislation covering just any community. **Mr. Morris** said it is not directed at small communities. Small communities were used as an example of where this opportunity might be used. The public disclosure would apply to all cases. **REP. EWER** asked **Mr. Morris** if he feels self-dealing is more apt to take place in a small county than in a large one.

**Mr. Morris** said he has not experienced any self-dealing within any county, regardless of size. However, in response to **REP. EWER'S** question, **Mr. Morris** said he felt it would be easier in a large county rather than a small county where everyone knows everyone else.

Closing by Sponsor:

**REP. BERGMAN** closed on HB 550. She pointed out that the money is not only for low-income housing but there is also money for home improvement if they qualify. This could be for landlords if they rent to low-income.

**VICE CHAIRMAN BRANDEWIE** assumed the chair.

## HEARING ON HOUSE BILL 440

Opening Statement by Sponsor:

**REP. NORM WALLIN, HD 78, Bozeman,** introduced HB 440, which would allow water and/or sewer districts to be a unit which is part of local government.

Proponents' Testimony:

**Doug Wells, representing the RAE Subdivision, County Water and Sewer District No. 313,** testified in favor of HB 440. EXHIBIT 48

**Paul Torok,** submitted testimony in support of HB 440. EXHIBIT 49

Opponents' Testimony: None

## EXECUTIVE ACTION ON HOUSE BILL 438

**Motion**: REP. STELLA JEAN HANSEN MOVED HB 438 DO PASS.

**Discussion**: Bart Campbell informed the Committee of a requested amendment by REP. VIVIAN BROOKE. EXHIBIT 6 REP. BROWN commented that he had a conversation with the Missoula Police Chief regarding HB 438. Missoula has a particular bar which stays open until after 2 a.m. and underage individuals play pool and hang around outside the bar. REP. BROWN said it is from this isolated instance this bill was drafted which will affect the entire state. He recommended that Section 7-32-2302, which allows the establishment of a curfew, should be used rather than trying to address the problem with another statute.

**Motion/Vote**: REP. BROWN MOVED TO TABLE HB 438. Motion carried 14-2 with REPS. BRANDEWIE AND SAYLES opposing.

## EXECUTIVE ACTION ON HOUSE BILL 584

**Motion**: REP. BROWN MOVED HB 584 DO PASS.

**Motion/Vote**: REP. BROWN moved to amend HB 584. EXHIBIT 52 Motion carried unanimously.

**Motion/Vote**: REP. BROWN MOVED HB 584 DO PASS AS AMENDED. Motion carried unanimously.

**Motion/Vote**: REP. RICE MOVED TO PLACE HB 584 ON THE CONSENT CALENDAR. Motion carried unanimously.

## EXECUTIVE ACTION ON HOUSE BILL 510

**Motion/Vote**: REP. HANSEN MOVED HB 510 DO PASS. Motion carried unanimously.

**Motion/Vote**: REP. HANSEN MOVED TO PLACE HB 510 ON THE CONSENT CALENDAR. Motion carried unanimously.

## EXECUTIVE ACTION ON HOUSE BILL 550

**Motion/Vote**: REP. VOGEL MOVED HB 550 DO PASS. Motion carried 14-2 with REPS. MCCAFFREE AND WYATT opposing.

## EXECUTIVE ACTION ON HOUSE BILL 440

**Motion/Vote**: REP. BROWN MOVED HB 440 DO PASS. Motion carried 13-3 with REPS. VOGEL, DOWELL AND MCCAFFREE opposing.

HOUSE OF REPRESENTATIVES

LOCAL GOVERNMENT COMMITTEE

ROLL CALL DATE 2/16/93

| NAME | PRESENT | ABSENT | EXCUSED |
|---|---|---|---|
| REP. NORM WALLIN, CHAIRMAN | ✓ | | |
| REP. RAY BRANDEWIE, VICE CHAIRMAN | ✓ | | |
| REP. ELLEN BERGMAN | ✓ | | |
| REP. JOHN BOHLINGER | ✓ | | |
| REP. DAVE BROWN | ✓ | | |
| REP. TIM DOWELL | ✓ | | |
| REP. DAVID EWER | ✓ | | |
| REP. STELLA JEAN HANSEN | ✓ | | |
| REP. JACK HERRON | ✓ | | |
| REP. ED McCAFFREE | ✓ | | |
| REP. SHEILA RICE | ✓ | | |
| REP. TIM SAYLES | ✓ | | |
| REP. LIZ SMITH | ✓ | | |
| REP. RANDY VOGEL | ✓ | | |
| REP. KARYL WINSLOW | ✓ | | |
| REP. DIANA WYATT | ✓ | | |
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| | | | |

Carley
437

HOUSE STANDING COMMITTEE REPORT

February 17, 1993



Mr. Speaker: We, the committee on Local Government report that House Bill 550 (first reading copy -- white) do pass .

Signed: _____

Norm Wallin, Chair

Committee Vote:
Yes ___, No ___.

EXHIBIT 46
DATE 2/16/93
HB 550

HB 550

CONFLICT OF INTEREST

At present, federal regulations and Montana conflict of interest laws prohibit local government officials, employees or their relatives from benefitting from contracts or programs entered into by the governing body. Section 2-2-201,MCA states that public officers, employees and former employees may not have an interest in public contracts. Section 7-5-4109, MCA, which refers specifically to cities and towns, states that the mayor, any member of the council, any city or town officer, or any relative or employee cannot be directly or indirectly interested in the profits of any contract entered into by the council during their term of office.

While these statutes are important to prevent abuse of local government office, situations arise that create unfairness where people who are otherwise eligible to participate in a program are denied the opportunity because of these statutes.

The federal funded Community Development Block Grant (CDBG) program, administered by the state Department of Commerce, is one program where inequities frequently occur. The CDBG program makes federal money available to rehabilitate substandard homes of low and moderate income families. Because of conflict of interest laws, people who otherwise qualify for assistance are denied the opportunity because they are related to a local official or are an employee but have no involvement in the administration of the program. For example, the aunt of a city councilman could not participate in this program because she is related to a member of the governing body. Numerous situations have occurred in recent years where low income dog catchers, street employees, and policemen have been denied the opportunity to have their houses refurbished even though they had no involvement in the administering the program.

Under federal regulations, the city council is allowed to waive the prohibition after advertising and publicly disclosing the conflict and holding a public hearing. However, Montana conflict of interest laws are absolute and offer no avenues for waiver in instances where the prohibition unfairly denies an otherwise qualified person the benefit of the program.

Many examples of unfairness have occurred in Montana. In White Sulphur Springs a person serving part time as city dog catcher and a city public works employee had their applications for housing rehab denied. Neither of these city employees had any decision-making or administrative role in the CDBG housing program, and both qualified as low income people. Similar denials were necessary in Wolf Point for a dog catcher, parttime city mechanic and a city councilman's mother living on social security.

The fact that relatives of municipal government officers and employees come under state conflict of interest laws is particularly a problem in small communities. Because these rural communities have many families with third and fourth generation residents, a local government employee may be related to many families living in the community.

The state's conflict of interest statutes can have adverse effects on communities. In White Sulphur Springs, a man under contract with the city to serve as building inspector was appointed to fill a vacancy on the city council. Montana's conflict of interest laws forced him to either resign as building inspector or to serve with no pay. His resignation as building inspector has created a hardship for White Sulphur Springs, because almost no other resident is qualified.

HB 550 proposes to deal with these problems by adding a provision to Montana statutes that would offer an opportunity for waiver of the prohibition after full public disclosure and a public hearing. The bill sets out four considerations that governing bodies would have to consider in deciding whether to grant a waiver.

HB 550 presumes that the requirement for full public disclosure and the right for public comment will deter "sweetheart deals" and other forms of abuse. The process would operate similar to the federal process. Even if an occasional questionable arrangement were made, on balance the public interest is better served by providing a relief mechanism where absolute application of the law creates unintended hardship or discrimination.
local governing bodies

EXHIBIT 46
DATE 2/16/93
HB 550

# the City of Hardin

CDBG Housing & Community Revitalization Program

EXHIBIT 46
DATE 2/16/93
HB 550

February 4, 1993

Representative Ellen Bergman
Montana State Legislature
Capitol Station
Helena, Mt. 69620

Dear Representative Bergman,

It is my understanding that you are introducing legislation that would modify Montana's existing codes governing conflict of interest (e.g. Section 2-2-2-1 & Section 7-5-4109) to allow employees, officers and their relatives to benefit from public activities when such persons have no decision making role or supervisory role in such activity.

This is to advise you that the City of Hardin would strongly support such changes in the codes.

While we recognize that the public interest must be protected to avoid self-serving benefits and obvious conflicts, we feel that current Montana law creates a discriminatory policy. People who are perfectly eligible to receive services are being denied access to such service due to their employment status.

The following describes how existing codes have adversely affected public officials and employees in Hardin.

**Situation #1.** Recently, the City of Hardin operated a Community Development Block Grant Project. Because employees are prohibited from benefiting from any activities in which the City has a contract, the person would drives the City's garbage truck was prohibited from applying for a CDBG loan which would have repaired his house. This person and his family met all other CDBG criteria, including being low and moderate income. And, there were plenty of programmatic safe-guards to ensure that the public interest was protected against over-expenditure or favoritism.

**Situation #2.** As part of the same CDBG Project, the City also implemented a "self-help" house painting project, whereby the project supplied paint and very limited materials to low income families who would in turn, paint their own homes, make minor repairs and remove hazards. All city employees were eliminated as candidates for the program.

**Situation #3.** In still another conflict, the City of Hardin was forced to drop a concrete supplier from the "subcontractor" bidding list because he was the cousin of the Mayor. Since this person was a potential beneficiary, and even though the bids were opened in public, because of his relationship to the Mayor, he could not bid. The net result was that the only other cement supplier in the area had a monopoly on all concrete work. Given the lack of competition in the market place, the price of concrete began to rise noticeably. In short, the taxpayers paid more, project schedules deteriorated because the incentive to perform was lost, or the remaining contractor became to busy, and the public became critical of the City and State for such unreasonable practices.

In closing, we like to reiterate our support for your legislation. Not to change the code only leaves the door open for public officials to inadvertently, or even blatantly avoid or violate a law that is both unreasonable, impractical, and most likely discriminatory in nature.

Thank you for your time and attention to our position on this matter. If you would like any additional information or input, please do not hesitate to contact us.

Sincerely,

Rusty Rokita
CDBG Project Administrator

cc: Koebbe, Mayor
Morton, City Attorney

EXHIBIT 46
DATE 2/16/93
HB 550

Linda K. Twitchell dba
TWITCHELL ADMINISTRATIVE SERVICES
Community Development Office
201 4th Avenue South
Wolf Point, MT 59201

**********

February 2, 1993

Business Services, Inc.
Box 508
White Sulphur Springs, MT 59645

Dear Barb and Jim;

As project manager for the City of Wolf Point CDBG housing grants, we have found it necessary to deny several applications for housing rehab due to the present conflict of interest standards. A mechanic working part time for the City with several small children and an evident need for housing rehab, the dog catcher, and a City Council member's mother living on Social Security were all unable to participate in the program.

We must also consider that family members tend to remain in small communities. City Council members are often related to several families within the City. The same is true of City employees. While the City encourages qualified persons to become involved in public service, this commitment can be discouraged by restrictions placed on their families.

Therefore, I am in full support of your proposal intending to give cities some relief from the strict wording of the MCA statutes regarding conflict of interest in CDBG projects. I feel this proposal would prove to enhance life in the rural cities throughout Montana. I can not foresee any negative ramifications of such a proposal.

Please keep us updated as to the progress of this bill and feel free to include this letter in any proposal addressing this issue.

Sincerely,

Linda

Linda Twitchell

EXHIBIT # 47
DATE 2/16/93
HB 550

BUSINESS SERVICES, INC.
Jim and Barbara Richard
Box 508, 16 W. South Street
White Sulphur Springs, MT 59645
Phone 547-2289 FAX 547-3824

**Consultants in Economic Development**

**Community Development and Planning**

To Whom it May Concern:

Following are descriptions of circumstances in which the current Montana Conflict of Interest and Ethics laws adversely affected persons belonging to a class of people targeted for assistance by Federal programs, to the point of reverse discrimination, or affected the program to the detriment of the public benefit:

In Wolf Point, two of the foremost rehabilitation contractors had to resign from the City Council before the CDBG with Commerce contract was signed in order to participate as contractors in the program. Eliminating them from the program would have driven costs up by eliminating the majority of competition. Federal law would have provided a public review process to establish that prohibiting these contractors from participating would be contrary to public benefit, and detrimental to the low and moderate income households the program was designed to serve.

In Saco, the 85 year old, blind mother of the volunteer mayor, who desperately needed housing repairs and special handicap installations, was ineligible for the program.

In White Sulphur Springs, the program lost its elderly, retired CDBG housing inspector who had been with the program for three years when he was appointed by the Mayor to the City Council.

Also in White Sulphur, the very low income, single female dog catcher had to quit her $100 per month job in order to participate in the program.

Also in White Sulphur, the low income public works director, (the only employee of the City in public works) was ineligible for badly needed housing repairs and new windows.

In Malta, the low income, water clerk, a single female mother of two children was ineligible for a new furnace and insulation.

Barbara Richard
CDBG Housing Program Administrator

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

LOCAL GOVERNMENT COMMITTEE BILL NO. HB 550

DATE 2/16 SPONSOR(S) Rep. Ellen Bergman

PLEASE PRINT PLEASE PRINT PLEASE PRINT

| NAME AND ADDRESS | REPRESENTING | SUPPORT | OPPOSE |
|---|---|---|---|
| D. Ross | Audubon Leg. Fund | ✓ | |
| Gus Byrom 703 Red Letter | Dept. of Commerce | | |
| Jim Richard | self | ✓ | |
| 1708 Gold Rush, Helena Wayne Chamberlain, MD. | self | X | |
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PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

Closing by Sponsor:

Representative Wyatt stated HB 368 would make resolution and ordinance code uniform.

## HEARING ON HB 550

Opening Statement by Sponsor:

Representative Ellen Bergman, House District 26, spoke from prepared testimony in support of HB 550 and submitted two letters in support of the measure. (Exhibit #1)

Proponents' Testimony:

Mr. Alec Hansen, Montana League of Cities and Towns, stated current conflict of interest laws hurt people in small communities by discouraging participation. He said the public disclosure requirements mandated by HB 550 would safeguard against any abuses of the system. Mr. Hansen noted that in small towns, nearly everyone is related to one another in some way. He stated smaller towns have an especially difficult time trying to find qualified people to serve in local government.

Mr. Hansen noted that the House and Senate Committees on Local Government now meet at the same time and apologized for not being present during the hearing on HB 301. He submitted a letter in support of HB 301 (Exhibit #2) and stated his support for HB 301.

Mr. Jim Richard, White Sulphur Springs, stated his support for HB 550. He said there have been a number of situations in White Sulphur Springs which have highlighted the need for a change in the conflict of interest law. He said the aggressive press in larger communities do a better job of guarding against the arrangement of "sweetheart deals" than would any enforcement measure contained in HB 550.

Opponents' Testimony:

None.

Informational Testimony:

None.

Questions From Committee Members and Responses:

None.

**Closing by Sponsor:**

Representative Bergman stated HB 550 was also supported by the Montana Association of Counties. She said many smaller towns have experienced problems with current conflict of interest laws and added she would not be surprised if larger cities experienced it as well.

## ADJOURNMENT

**Adjournment:** 4:40 p.m.

SENATOR JOHN "ED" KENNEDY, Jr., Chair

ROSALYN COOPERMAN, Secretary

JEK/rlc

# ROLL CALL

SENATE COMMITTEE Local Government DATE 3-11-93

| NAME | PRESENT | ABSENT | EXCUSED |
|---|---|---|---|
| Senator John "Ed" Kennedy | | | ✓ |
| Senator Sue Bartlett | ✓ | | |
| Senator Dorothy Eck | ✓ | | |
| Senator Delwyn Gage | ✓ | | |
| Senator Ethel Harding | ✓ | | |
| Senator John Hertel | ✓ | | |
| Senator David Rye | ✓ | | |
| Senator Bernie Swift | ✓ | | |
| Senator Mignon Waterman | | | ✓ |
| Senator Jeff Weldon | ✓ | | |
| Senator Eleanor Vaughn | ✓ | | |
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Exh

SENATE LOCAL GOVERNMENT
EXHIBIT NO. 1
DATE 3-11-93
BILL NO. HB 550

TESTIMONY OF REP. BERGMAN
before the Senate Local Government Committee

House Bill 550: Waiver of Conflict of Interest Statutes

At present, federal regulations and Montana conflict of interest laws prohibit local government officials, employees or their relatives from benefitting from contracts or programs entered into by the governing body. Section 2-2-201,MCA states that public officers, employees and former employees may not have an interest in public contracts. Section 7-5-4109, MCA, which refers specifically to cities and towns, states that the mayor, any member of the council, any city or town officer, or any relative or employee cannot be directly or indirectly interested in the profits of any contract entered into by the council during their term of office.

While these statutes are important to prevent abuse of local government office, situations arise that create unfairness where people who are otherwise eligible to participate in a program are denied the opportunity because of those statutes.

The federal funded Community Development Block Grant (CDBG) program, administered by the state Department of Commerce, is one program where inequities frequently occur. The CDBG program makes federal money available to rehabilitate substandard homes of low and moderate income families. Because of conflict of interest laws, people who otherwise qualify for assistance are denied the opportunity because they are related to a local official or are an employee but have no involvement in the administration of the program. For example, the aunt of a city councilman could not participate in this program because she is related to a member of the governing body. Numerous situations have occurred in recent years where low income dog catchers, street employees, and policemen have been denied the opportunity to have their houses refurbished even though they had no involvement in the administering the program.

Under federal regulations, the city council is allowed to waive the prohibition after advertising and publicly disclosing the conflict and holding a public hearing. However, Montana conflict of interest laws are absolute and offer no avenues for waiver in instances where the prohibition unfairly denies an otherwise qualified person the benefit of the program.

Many examples of unfairness have occurred in Montana. In White Sulphur Springs a person serving part time as city dog catcher and a city public works employee had their applications for housing rehab denied. Neither of these city employees had any decision-making or administrative role in the CDBG housing program, and both qualified as low income people. Similar denials were necessary in Wolf Point for a dog catcher, parttime city mechanic and a city councilman's mother living on social security.

In Miles City a policeman, who rents a 4-unit apartment to low income families, was unable to receive assistance to renovate his apartment building.

The fact that relatives of municipal government officers and employees come under state conflict of interest laws is particularly a problem in small communities. Because these rural communities have many families with third and fourth generation residents, a local government employee may be related to many families living in the community.

The state's conflict of interest statutes can have adverse effects on communities. In White Sulphur Springs, a man under contract with the city to serve as building inspector was appointed to fill a vacancy on the city council. Montana's conflict of interest laws forced him to either resign as building inspector or to serve with no pay. His resignation as building inspector has created a hardship for White Sulphur Springs, because almost no other resident is qualified.

HB 550 proposes to deal with these problems by adding a provision to Montana statutes that would offer an opportunity for waiver of the prohibition after full public disclosure and a public hearing. The bill sets out four considerations that governing bodies would have to consider in deciding whether to grant a waiver.

HB 550 presumes that the requirement for full public disclosure and the right for public comment will deter "sweetheart deals" and other forms of abuse. The process would operate similar to the federal process. Even if an occasional questionable arrangement were made, on balance the public interest is better served by providing a relief mechanism where absolute application of the law creates unintended hardship or discrimination.

3-11-93
HB-550

**Situation #3.** In still another conflict, the City of Hardin was forced to drop a concrete supplier from the "subcontractor" bidding list because he was the cousin of the Mayor. Since this person was a potential beneficiary, and even though the bids were opened in public, because of his relationship to the Mayor, he could not bid. The net result was that the only other cement supplier in the area had a monopoly on all concrete work. Given the lack of competition in the market place, the price of concrete began to rise noticeably. In short, the taxpayers paid more, project schedules deteriorated because the incentive to perform was lost, or the remaining contractor became to busy, and the public became critical of the City and State for such unreasonable practices.

In closing, we like to reiterate our support for your legislation. Not to change the code only leaves the door open for public officials to inadvertently, or even blatantly avoid or violate a law that is both unreasonable, impractical, and most likely discriminatory in nature.

Thank you for your time and attention to our position on this matter. If you would like any additional information or input, please do not hesitate to contact us.

Sincerely,

Rusty Rokita
CDBG Project Administrator

cc: Koebbe, Mayor
Morton, City Attorney

# the City of Hardin

CDBG Housing & Community Revitalization Program

Exhibit #1
3-11-93
HB-550

February 4, 1993

Representative Ellen Bergman
Montana State Legislature
Capitol Station
Helena, Mt. 69620

Dear Representative Bergman,

It is my understanding that you are introducing legislation that would modify Montana's existing codes governing conflict of interest (e.g. Section 2-2-2-1 & Section 7-5-4109) to allow employees, officers and their relatives to benefit from public activities when such persons have no decision making role or supervisory role in such activity.

This is to advise you that the City of Hardin would strongly support such changes in the codes.

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The following describes how existing codes have adversely affected public officials and employees in Hardin.

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**Situation #2.** As part of the same CDBG Project, the City also implemented a "self-help" house painting project, whereby the project supplied paint and very limited materials to low income families who would in turn, paint their own homes, make minor repairs and remove hazards. All city employees were eliminated as candidates for the program.

EXHIBIT 17
3-11-93
HB-550

BUSINESS SERVICES, INC.
Jim and Barbara Richard
Box 508, 16 W. South Street
White Sulphur Springs, MT 59645
Phone 547-2289 FAX 547-3824

**Consultants in Economic Development**

**Community Development and Planning**

To Whom it May Concern:

Following are descriptions of circumstances in which the current Montana Conflict of Interest and Ethics laws adversely affected persons belonging to a class of people targeted for assistance by Federal programs, to the point of reverse discrimination, or affected the program to the detriment of the public benefit:

In Wolf Point, two of the foremost rehabilitation contractors had to resign from the City Council before the CDBG with Commerce contract was signed in order to participate as contractors in the program. Eliminating them from the program would have driven costs up by eliminating the majority of competition. Federal law would have provided a public review process to establish that prohibiting these contractors from participating would be contrary to public benefit, and detrimental to the low and moderate income households the program was designed to serve.

In Saco, the 85 year old, blind mother of the volunteer mayor, who desperately needed housing repairs and special handicap installations, was ineligible for the program.

In White Sulphur Springs, the program lost its elderly, retired CDBG housing inspector who had been with the program for three years when he was appointed by the Mayor to the City Council.

Also in White Sulphur, the very low income, single female dog catcher had to quit her $100 per month job in order to participate in the program.

Also in White Sulphur, the low income public works director, (the only employee of the City in public works) was ineligible for badly needed housing repairs and new windows.

In Malta, the low income, water clerk, a single female mother of two children was ineligible for a new furnace and insulation.

Barbara Richard
CDBG Housing Program Administrator

Linda K. Twitchell dba
TWITCHELL ADMINISTRATIVE SERVICES
Community Development Office
201 4th Avenue South
Wolf Point, MT 59201

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February 2, 1993

Business Services, Inc.
Box 508
White Sulphur Springs, MT 59645

Dear Barb and Jim;

As project manager for the City of Wolf Point CDBG housing grants, we have found it necessary to deny several applications for housing rehab due to the present conflict of interest standards. A mechanic working part time for the City with several small children and an evident need for housing rehab, the dog catcher, and a City Council member's mother living on Social Security were all unable to participate in the program.

We must also consider that family members tend to remain in small communities. City Council members are often related to several families within the City. The same is true of City employees. While the City encourages qualified persons to become involved in public service, this commitment can be discouraged by restrictions placed on their families.

Therefore, I am in full support of your proposal intending to give cities some relief from the strict wording of the MCA statutes regarding conflict of interest in CDBG projects. I feel this proposal would prove to enhance life in the rural cities throughout Montana. I can not foresee any negative ramifications of such a proposal.

Please keep us updated as to the progress of this bill and feel free to include this letter in any proposal addressing this issue.

Sincerely,

Linda

Linda Twitchell

DATE 3-11-93

SENATE COMMITTEE ON Local Government

BILLS BEING HEARD TODAY: HB 550, HB 368, HB 367, HB 301

| Name | Representing | Bill No. | Check One: Support | Oppose |
|---|---|---|---|---|
| Gus Byrom | Dept of Commerce | 550 | | |
| Beverly Byron | MACO | HB 368 | ✓ | |
| Jim Richard | | 550 | | |
| Beverly Byron | MACO | HB550 | ✓ | |
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# VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

F10

Motion/Vote:

Senator Rye moved HB 479 BE TABLED. MOTION CARRIED with Senators Eck, Kennedy and Weldon voting NO.

## EXECUTIVE ACTION ON HB 481

Motion/Vote:

Senator Eck moved HB 481 BE CONCURRED IN. MOTION CARRIED UNANIMOUSLY. Senator Waterman will carry HB 481 on the Senate floor.

## EXECUTIVE ACTION ON HB 550

Motion/Vote:

Senator Waterman moved HB 550 BE CONCURRED IN. MOTION CARRIED UNANIMOUSLY. Senator Bartlett will carry HB 550 on the Senate floor.

## EXECUTIVE ACTION ON HB 584

Discussion:

Senator Waterman asked if there was a problem with water quality districts in Montana. She said the bill was drafted in response to a problem in Utah, not Montana.

Motion/Vote:

Senator Weldon moved HB 584 BE TABLED. MOTION CARRIED UNANIMOUSLY.

## EXECUTIVE ACTION ON HB 644

Motion:

Senator Weldon moved HB 644 BE TABLED.

Discussion:

Senator Weldon stated he had done some additional research on HB 644 to answer some of his concerns regarding the bill. He

SENATE STANDING COMMITTEE REPORT


March 26, 1993

MR. PRESIDENT:

We, your committee on Local Government having had under consideration House Bill No. 550 (first reading copy -- blue), respectfully report that House Bill No. 550 be concurred in.

Signed: John Ed Kennedy Jr.
Senator John "Ed" Kennedy, Jr., Chair

M— Amd. Coord.
___ Sec. of Senate

Senator Bartlett
Senator Carrying Bill

681012SC.Sma